

NOT FOR PUBLICATION

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

PEOPLE OF THE VIRGIN ISLANDS,	)	CASE NO. SX-09-CR-418
	)	SX-09-CR-419
Plaintiff,	)	SX-09-CR-420
	)	SX-09-CR-421
v.	)	
CAREEM AMBROSE,	)	
	)	
Defendants.	)	
	)	
	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Craig Cambran's Motion to Suppress Statements and Evidence, filed February 8, 2010. Defendants, Ferris Knight, Careem Ambrose and Hanif Wathey join in this motion. (Rec. of Proceedings, entered Feb. 8, 2010.) The Court held a hearing on the motion on November 15, 2012. All Parties were represented. For the following reasons, the Court will grant the instant motion.

I. FACTUAL AND PROCEDURAL HISTORY

On midnight, August 7, 2009 , Officers Parris and Francois of the Virgin Islands Police Department were on mobile patrol in a marked police car, on the Melvin H. Evans Highway, traveling westward in the vicinity of Profit Hills. Officer Parris testified that he and his partner observed a white Nissan vehicle (License Plate No. CDU-383) traveling in front of their police, at approximately 50 to 55 miles an hour. The vehicle did not slow down when it reached the East Airport road, despite the sign indicating drivers were required to reduce their speed to 30 miles an hour. Officers continued to follow the Nissan and observed that at the William Roebuck intersection, the vehicle continued at a rate of speed of 50 to 55 miles an hour, despite a second posted sign informing drivers of the speed limit of 30 miles an hour. Office Parris, the driver of the police vehicle, testified that he put his police lights on, indicating that the

driver should stop the vehicle. The officers observed four occupants in the vehicle, later identified as Defendants, Ferris Knight, Careem Ambrose, Craig Cambran and Hanif Wathey. Knight was the driver, Ambrose was seated in the front passenger seat, Cambran in the rear on the driver's side and Wathey was seated in the rear behind the front passenger.

Shortly thereafter, Officer Parris testified that the Nissan, driven by Knight stopped on the side of the road, in the vicinity of Estate Paradise and Yellow Cedar. Officer Parris requested via the patrol unit's speaker, that the driver step out of the vehicle and produce his driver's license, vehicle registration, and proof of insurance. Ferris Knight then exited the vehicle with his documents in hand and approached their unit. While Officer Parris was advising Ferris Knight as to the reason he was being stopped, the right side rear seat passenger (later identified as Wathey), exited the vehicle and allegedly stated, "'Officers I need to pee bad", before walk towards the bushy area on the left side of the roadway holding the front his pants. Immediately after, the driver side rear passenger (later identified as Cambran) suddenly exited the vehicle and also stated that he had to pee and started to walk towards the bushes, holding the front his pants.

Concerned for his own safety and the safety of Office Francois, Officer Parris testified that he told Cambran and Wathey to stop. When asked why he did so, Officer Parris explained "[f]or our safety. At that time, there's four individuals in the car, it's late at night so were trying to get some kind of control before we proceed to a traffic stop." (Supp. Hr'ng. pg. 7, lines 20 -24.) Officer Parris, then requested that Ambrose exit the vehicle. Officer Parris then proceeded to ask Knight, if he had anything on him,

Knight stated that he did not. Officer Parris also stated that he asked Knight if he could search the vehicle and that Knight replied, "Yes, everything is safe." (*Id.* at pg. 8, line 11.) A subsequent pat down of Knight, Wathey, Cambran, and Ambrose's clothing was conducted to check for any hard objects that may be a possible weapon. Officer Parris testified that no items were found on the Defendants' person.

Officer Parris then walked to toward the passenger side door to conduct a search of the vehicle, at which time the officer stated he could smell the faint odor of marijuana coming from the inside of the vehicle. When he shone his flashlight inside the vehicle, he observed in the center console cup holder, a small clear zip lock bag (dime bag) containing a green leafy substance suspected to be marijuana, along with a box of bamboo paper, and a piece of brown tobacco leaf, in plain view. Officer Parris then proceeded to conduct a search of the vehicle. Officer Parris testified that while searching the vehicle, he observed a black back pack and a brown paper bag on the floor behind the front passenger seat. He picked the bag up black back placed the bag on the back seat and then put his hand on the outside of said bag, which, he observed was very soft and appeared to contain a heavy object.

A closer inspection of the bag revealed a silver handgun with a brown handle. Officer Parris immediately shouted "gun" to alert his partner. The gun was the only item recovered from the black bag. Officer Parris asked the Defendants if any them were licensed in the Virgin Islands to possess, carry or own a firearm. They all stated that they were not. Shortly afterward, the Defendants were read their Miranda rights.

Forensic Officer M. Hector field tested the suspected marijuana, which was determined to be positive. The firearm in question was later identified as a .380 Sterling

Mark II DI A Arms Stainless, Model 400. It was also determined that the firearm magazine was loaded with (8) live .380 caliber rounds of ammunition. None of the Defendants are licensed to possess or carry a firearm in the U.S. Virgin Islands. Defendant Kareem Ambrose and Ferris Knight were later charged with Unauthorized Possession of a Firearm/ Principal in violation of Section 2253(a) & 11(a) of the Virgin Islands Code; Failure to Report Ammunition Obtained or Brought Into the Virgin Islands / Principal in violation of Section 470 (a) of Title Twenty Three & of the Virgin Islands and Section 11(a) of Title Fourteen of the Virgin Islands Code and Simple Possession of a Controlled Substance in violation of Section 607(a) of Title Nineteen of the Virgin Islands Code. Ferris Knight was also charged with Speeding in violation of Section 494(a) of Title Twenty of the Virgin Islands Code. Defendants Wathey and Cambran were charged with Unauthorized Possession of a Firearm/ Principal in violation of Section 2253(a) & 11(a) of the Virgin Islands Code; Failure to Report Ammunition Obtained or Brought Into the Virgin Islands / Principal in violation of Section 470 (a) of Title Twenty Three & of the Virgin Islands and Section 11(a) of Title Fourteen of the Virgin Islands Code

Defendants argue that the traffic stop, as well as the search and seizure was done in violation of the Defendant's Fourth Amendment rights under the United States Constitution. As such, the Defendant contend that the items seized from the Defendants car must be suppressed.

II. STANDARD AND DISCUSSION

For the purposes of suppression of evidence, a defendant typically has the burden of establishing that his Fourth Amendment rights were violated by the challenged search

or seizure. *United States v. Murray*, 53 V.I. 831, 842 (D.V.I. 2010) (quoting *Rakas v. Illinois*, 439 U.S. 128, 132, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978)).

However, when the search or seizure at issue was conducted without a warrant, the burden switches to the government to demonstrate the existence of a recognized exception to the warrant requirement. *Id.*

The Fourth Amendment of the U.S. Constitution guarantees the right of a person to be free from unreasonable searches and seizures.¹ U.S.C.A. Const. Amend. 4. A "search" occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. *United States v. Jacobson*, 466 U.S. 109, 113 (1984). A "seizure" of property occurs when there is some meaningful interference with an individual's possessory interests in that property. *Id.* Searches conducted outside the judicial process are *per se* unreasonable, subject only to a few specific exceptions. *Arizona v. Gant*, 556 U.S. 332, 338 (2009)(citing to *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967)). The Court is tasked with evaluating every situation based on the circumstances of that particular search or seizure. See *United States v. Montoya de Hernandez*, 473 U.S. 531 (1985).

A. *Did the Officers seize the Defendants?*

Under the law, a "traffic stop" entails a seizure of the driver "even though the purpose of the stop is limited and the resulting detention brief." *Brendlin v. California*, 551 U.S. 249, 255 (2007)(citing *Delaware v. Prose*, 440 U.S. 648, 653, (1979); see also *Government of the Virgin Islands v. Ali*, 45 V.I. 164 (Terr. Ct. 2003))). When police make a traffic stop, a passenger in the car, like the driver, is seized for Fourth

¹ The Fourth Amendment is made applicable to the Virgin Islands pursuant to Section 3 of the Revised Organic Act of 1954, as amended. See 48 U.S.C.A. § 1561.

Amendment purposes and so may challenge the stop's constitutionality. *Id.* at 250. In this matter, law enforcement officers stopped the Defendants on the allegation that they committed a traffic violation, thus the Officers committed a seizure.

B. *Did the Officer have the right to seize the Defendants?*

An officer's decision to stop an automobile must not be "unreasonable" under the circumstances surrounding the stop. *Id.* at 810. Generally, "the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren v. United States*, 517 U.S. 806 (1996). Reasonable suspicion and probable cause are determined with reference to the facts and circumstances within the officer's knowledge at the time of the investigative stop or arrest. *Devenpeck v. Alford*, 543 U.S. 146 (2004). In this matter, Officer Parris testified that he and his partner witnessed the vehicle in question, commit two traffic violations by failing to decrease its speed despite the posted speed limit at two separate intersections in violation of 20 V.I.C. § 494. Defendants' put forth no evidence to refute Office Parris' assertion. The Court finds that the traffic stop of the Defendant was lawful and constitutional.

C. *Did the Officers act within the scope of the initial seizure?*

Once a vehicle is lawfully detained, an officer may order a driver to step out of vehicle. *Johnson*, 555 U.S. at 324 (quoting *Pennsylvania v. Mimms*, 434 U.S. 106, 109. After the Nissan was pulled over, Officer Parris' ordered the driver, Ferris Knight to exit the vehicle with his documents, license, registration and proof of insurance and bring them to the police car. While Officer Parris was advising Knight as to the reason of him being stopped, Wathey abruptly exited the vehicle and allegedly stated, "Officers I

need to pee bad", before walking towards the bushy area on the left side of the roadway holding the front his pants. Immediately after, Cambran suddenly exited the vehicle and also stated that he had to pee and started to walk towards the bushes, holding the front his pants. Officer Parris immediately ordered all occupants to exit the vehicle, an act which is permitted under the law. *Brendlin*, 555 U.S. at 263. Defendant Ambrose then exited the vehicle.

It was after both Cambran and Wathey exited the vehicle without warning, that Officer Parris and François made the decision to pat down all of the Defendants. A police officer making a traffic stop may also order the passengers to exit the vehicle pending the completion of the stop. *Maryland v. Wilson*, 519 U.S. 408 (1997). However, to justify a pat down of the driver or a passenger during a traffic stop, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous. *Arizona v. Johnson*, 555 U.S. 323,332 (2009)(quotations omitted). The behavior of Cambran and Wathey could be seen as raising suspicion that the Defendants might be armed and dangerous, even though the Court concedes their behavior could also be viewed as the behavior of two persons who had to urinate badly. Nevertheless, the Court finds that the pat down of the Defendants' was within the scope of the seizure.

D. *Did the Officers have grounds to extend the search?*

After patting down all of the Defendants, Officer Parris asked Knight if he could search his vehicle. It was at this point that Officer Parris and Francois went beyond the scope of the traffic stop and converted this into a Terry stop. After a justified and lawful traffic stop, an officer who develops a reasonable, articulable suspicion of

criminal activity may inquire beyond the reason for the "traffic stop" and may detain the vehicle and its occupants for further investigation. *United States v. Givan*, 320 F.3d 452, 458 (2003); *see also Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)(citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). The purpose of a Terry stop is not to discover evidence of a crime, but to allow officers to pursue their investigation without the fear of violence. *People v. Archibald*, 50 V.I. 74, 92, 2008 VI LEXIS 23 (Super. Ct. 2008).

The Court finds that given the totality of the circumstances, Officer Parris' detention of the Defendants related to issue a warning ticket, and later ascertaining that the Defendants were not carrying weapons on their persons, went beyond the scope of the lawful seizure. "A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." *See generally Illinois v. Caballes*, 123 U.S. 405, 408. In this matter, Knight was pulled over because he violated traffic laws. Wathey and Cambran's decision to jump out of the car and assert that they had to pee gave officers justifiable cause to pat down the Defendants. However, after all the Defendants were patted down and no weapons were found, there is no evidence that even suggests that the stop of the Defendants should have continued. *Compare Givan*, 320 at 452. (appellate court affirmed lower court's denial of defendants' motion to suppress)(during traffic stop, the officer received conflicting stories from the defendants regarding their travel plans, the defendants were in an out of state rental car, and one of the defendants acted nervous and fidgety); *see also People of the Virgin Islands v. Margas*, 54 V.I. 3, 2010 VI LEXIS 19 (Super. Ct. 2010)(Court denies defendants' motion to suppress, finding that it was reasonable for officer to extend stop)(officer

became of the driver's delay in retrieving his license, registrations and proof of insurance, the driver's visible nervous demeanor and the continual "unabated" furtive movements of the defendants' inside of the vehicle.)).

E. Did the Officers obtain Knight's consent to search his car lawfully?

Officer Parris' unlawful extension of the stop is not obviated by Knight's subsequent consent to the search. In *Schneckloth* the Supreme Court stated that voluntariness "is a question of fact to be determined from the totality of all of the circumstances." *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973). The government may conduct a search without a warrant or probable cause if an individual consents to the search. See *Schneckloth v. Bustamonte*, 412 U.S. 218, 222, 93 S.Ct. 2041 (1973). Such consent must be voluntary and cannot be the product of duress or coercion. *Id.* at 223, 227. The People bear the burden of establishing, by a preponderance of the evidence, that consent was voluntarily given in light of the surrounding circumstances. *United States v. Sebetich*, 776 F.2d 412, 424 (3d Cir. 1985). In evaluating voluntariness, the Court must assess the totality of the circumstances, without giving dispositive effect to any one factor. *Schneckloth*, 412 U.S. at 226-27.

Some of the factors that the court may take into consideration are defendant's age, education, and intelligence; whether the officers told the defendant he could refuse to consent; whether the defendant was informed of his constitutional rights, the length of the encounter, whether the police threatened, physically intimidated, or punished the defendant, whether the police made promises or misrepresentations, whether the defendant was in custody or under arrest when consent was given; and whether the consent occurred in a public or a secluded place. *Schneckloth*, 412 U.S. at 226-227;

United States v. Price, 558 F.3d 270, 278 (3d Cir. 2009). Furthermore, the Supreme Court has indicated that knowledge of the right to refuse consent is "highly relevant to the determination that there had been consent." *United States v. Durante*, CRIM. No. 11-277, 2012 WL 395466 (D.N.J. Feb. 7, 2012) (citing *United States v. Medenhall*; 466 U.S. 544, 559 (1980)).

The Court finds that given the circumstances surrounding Knight's consent of the search of his car, his consent was not freely given. The Court does not find that factors such as Knight's intelligence or education level were implicated in whether his consent was lawful. Nor does the Court find that Officer Parris or Francois sought to punish Knight in any way; nevertheless, the factor of intimidation appears evident. It was the middle of the night when Knight's car was stopped by the Officers, Knight was ordered out of car by Officer Parris, he had just witnessed Officer Parris order Wathey and Cambran to halt their movement toward the bushes and order Ambrose to get out of the car. He had also been patted down by Officer Parris, right before consenting to the search of his vehicle. Further, there is no evidence that Knight had been advised that consent was not required. *Archibald*, 2008 VI LEXIS at 17. The police are neither required or compelled to give this warning to the accused. *Id.* (citations omitted). However, the absence of a warning or proof of such knowledge is a factor that may be considered by the Court in determining voluntariness. *Id.* (citing to *Schkencloth, supra.*). Taken as a whole, the Court finds that the Defendant's consent was not voluntary and instead was a result of coercion.

At the suppression hearing, Officer Parris testified that after receiving Knight's consent to search and patting down the Defendant's, he proceeded to approach the

white vehicle on the passenger side and that while approaching the vehicle, he smelled the odor of marijuana. (Supp. Hr'ng. pg. 12, lines 4 -7.) He was able to identify the "faint" odor of marijuana because of his years of experience and training as a police officer. (*Id.* at lines 21 -24.) Officer Parris also testified that he viewed the marijuana when he shone his flashlight into the front of the car. (*Id.* at lines 12 -14.) Under the Fourth Amendment, a seizure is lawful under the plain view doctrine if the officer is lawfully in a position to observe the items and it is immediately apparent to the officer that the items are evidence of a crime, contraband, or otherwise subject to seizure. See *Horton v. California*, 496 U.S. 128 (1990).

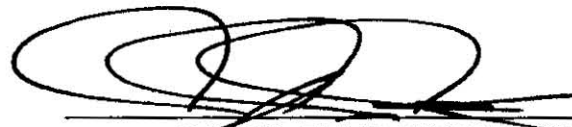
Despite Officer Parris' testimony that he smelled the faint odor of marijuana as he walked toward Knight's car, Officer Parris was not lawfully in a position to view the items because his actions were predicated on Knight's consent to search his vehicle. The Supreme Court has mandated that two factors have to be present for the plain view doctrine to be proper. First, the officer has to be in a position to lawfully observe the items in question. *Id.* If Officer Parris had testified that as he approached the vehicle to engage Knight as part of the lawful traffic stop and noticed what he believed to be marijuana in the front seat console, the Court would find this entirely more persuasive. Alternatively, if the Defendant had been placed under arrest, it would have been permissible for Officer Parris to conduct a limited search for evidence related to the arrest. *Arizona v. Gant*, 556 U.S. 332 (2009). But Knight was not under arrest and no evidence has been put forward to suggest that he would have been arrested for speeding. Officer Parris approached the vehicle with the intent to search it, only after

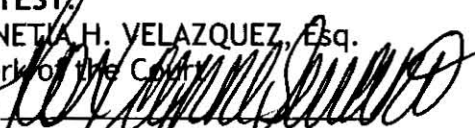
receiving consent from Knight. Consent that the Court finds was not freely given. As such, the Court does not find that the plain view doctrine applies in this matter.

III. CONCLUSION

- The Court finds after review of the record and the totality of the circumstances surrounding this matter, the People have failed to establish that the Officers did not unlawfully convert the traffic stop of the Defendants into a Terry stop. Further, the Court finds that the evidence does not support the supposition that Knight's consent to the search the vehicle was not a result of coercion. Ultimately, the Court holds that the subsequent search of the vehicle violated the Defendants' Fourth Amendment rights. As a result, the items seized from the vehicle are inadmissible as the fruit of the unlawful search. Accordingly, Defendant Craig Cambran's Motion for Suppression of Evidence and Statements will be granted. An order consistent with this opinion will follow.

DONE AND SO ORDERED this 20th day of September, 2013.


DARRYL DEAN DONOHUE, SR.
Presiding Judge of the Superior Court

ATTEST:
VENETIA H. VELAZQUEZ, Esq.
Clerk of the Court
By: 
Court Clerk Supervisor
Dated: 9/24/13

NOT FOR PUBLICATION

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

PEOPLE OF THE VIRGIN ISLANDS,	)	CASE NO. SX-09-CR-418
	)	SX-09-CR-419
Plaintiff,	)	SX-09-CR-420
	)	SX-09-CR-421
v.	)	
CAREEM AMBROSE,	)	
	)	
Defendants.	)	
	)	
	)	

ORDER

THIS MATTER came before the Court on Defendant, Craig Cambran's Motion to Suppress Evidence and Statements. Defendants, Ferris Knight, Careem Ambrose and Hanif Wathey joined in the motion. For reasons clarified in the Court's Memorandum Opinion of even date, it is hereby

ORDERED that Defendant Craig Cambran's Motion to Suppress Evidence and Statements is GRANTED. It is further

ORDERED that a copy of this order be served via certified mail to all counsel on record for the People of the Virgin Islands, Craig Cambran, Careem Ambrose, Hanif Wathey and Ferris Knight.

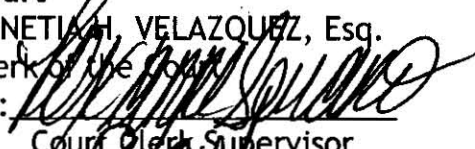
DONE AND SO ORDERED this 20th day of September, 2013.



DARRYL DEAN DONOHUE, SR.
Presiding Judge of the Superior

ATTEST:

Court
VENETIAH VELAZQUEZ, Esq.

Clerk of the Court
By: 
Court Clerk Supervisor

Dated: 9/24/13